

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

MARSHALL COUNTY RURAL
ELECTRIC COOPERATIVE d/b/a
CONSUMERS ENERGY

DOCKET NO. P-841

PROPOSED DECISION AND ORDER GRANTING PERMIT

(Issued September 13, 2000)

APPEARANCES:

MR. DENNIS L. PUCKETT, Attorney at Law, Sullivan & Ward, P.C., 801 Grand Ave., Suite 3500, Des Moines, Iowa 50309-2719, appearing on behalf of Marshall County Rural Electric Cooperative.

MS. JENNIFER C. EASLER, Attorney at Law, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Iowa Department of Justice, Office of Consumer Advocate.

STATEMENT OF THE CASE

On July 21, 2000, Marshall County Rural Electric Cooperative d/b/a Consumers Energy (Marshall County REC) filed a petition for a permit to construct, operate, and maintain approximately 230 feet of 2-inch diameter steel pipeline and approximately 10.17 miles of 6-inch polyethylene pipeline for the transportation of natural gas in Jasper and Marshall County, Iowa. (petition for permit; testimony of Mr. Heithoff) Marshall County REC amended its petition on July 26, 2000, July 31, 2000, and August 23, 2000. (petition for permit) Marshall County REC filed a land

restoration plan with its petition, and amended the plan on July 31, 2000. (land restoration plan; Munyon memo) The proposed pipeline will provide natural gas service to the Harvester Development in Marshall County, Iowa, and will serve customers along the route in Jasper and Marshall counties. (petition for permit; Burnett report; testimony of Mr. Heithoff)

On August 4, 2000, the Iowa Utilities Board (Board) assigned this case to a presiding officer. A procedural schedule was established by an order issued on August 9, 2000. In that order, the presiding officer set September 12, 2000 as the date for the hearing on the petition. Also in that order, the presiding officer proposed to take official notice of an August 8, 2000 report concerning the pipeline prepared by Mr. Gary Burnett, a utility regulatory inspector for the Utilities Division's Safety and Engineering Section. On August 29, 2000, the presiding officer issued an order amending the procedural order and proposing to take official notice of a memo dated August 22, 2000 by Ms. Cynthia Munyon, utility analyst for the Board.

Marshall County REC caused notice of the hearing to be published in Jasper County in The Newton Daily News, a newspaper of general circulation in the county, on August 18 and August 25, 2000. (affidavit of publication) Marshall County REC also caused notice of the hearing to be published in Marshall County in the Times-Republican, a newspaper of general circulation in the county, on August 23 and August 30, 2000. (affidavit of publication)

Marshall County filed prepared direct testimony of Mr. Brian Heithoff and Mr. Mark Hanson on August 23, 2000. The Iowa Department of Justice, Office of

Consumer Advocate (Consumer Advocate), filed a statement in lieu of testimony on September 1, 2000. The Consumer Advocate stated it did not object to the petition, waived its right to file prepared responsive testimony, and stated it did not object to the proposals to take official notice of the August 8th report and the August 22nd memo.

The hearing was held on September 12, 2000. Mr. Brian Heithoff, general manager of Marshall County REC, and Mr. Mark Hansen, project engineer for Midwest United Energy, LLC (MUE), testified on behalf of Marshall County REC. (testimony of Mr. Heithoff and Mr. Hansen) Mr. Gary Burnett testified on behalf of the Board.

At the hearing, Mr. Puckett, attorney for Marshall County REC, stated that the members of Marshall County REC had recently voted to change the name of the cooperative to Consumers Energy Cooperative. He stated that the name change would soon be registered with the Secretary of State, and requested that future orders and the permit be issued using the name Consumers Energy Cooperative. The undersigned administrative law judge stated it would not be possible to change the name on the proposed decision in the case, but that the Board would issue the permit using the Consumers Energy Cooperative name.

DISCUSSION OF THE EVIDENCE

Marshall County REC seeks a permit to construct, operate and maintain a new natural gas pipeline approximately 10.2 miles long in Jasper and Marshall

County, Iowa. (petition for permit; testimony of Mr. Heithoff) The proposed pipeline will provide natural gas service to the Harvester Development in Marshall County, Iowa, and will serve customers along the route in Jasper and Marshall counties. (petition for permit; Burnett report; testimony of Mr. Heithoff)

Part of the proposed pipeline will be a 2-inch steel line approximately 230 feet long with a maximum allowable operating pressure (MAOP) of 1000 psig. (petition exhibit C-1; Burnett report) Part of the proposed pipeline will be a 6-inch polyethylene line approximately 10.17 miles long and will have an MAOP of 100 psig. (petition exhibit C-2; Burnett report) The proposed pipeline will follow a route described in exhibit A attached to the petition for a permit (as amended). (petition for permit exhibit A)

Marshall County REC has enlisted the aid of Midwest United Energy, LLC (MUE) to assist it with construction and operation of the pipeline facilities. (testimony of Mr. Heithoff) MUE will construct the pipeline facilities from Mingo to the Harvester Development and negotiate with transporters/pipelines for Marshall County REC. (testimony of Mr. Heithoff) MUE will contract with Utility Consultants to train Marshall County REC employees in the operation and management of the facilities. (testimony of Mr. Heithoff; testimony of Mr. Hanson) MUE will operate and manage the facilities for the first 90 days of operation and Marshall County REC will then take over operation and management. (testimony of Mr. Heithoff) MUE will nominate and schedule transportation of natural gas to the Marshall County REC pipeline. (testimony of Mr. Heithoff)

Marshall County REC is obligated to design, construct, operate and maintain this pipeline in accordance with the standards adopted by reference at 199 IAC § 10.12(1), which include the federal natural gas pipeline safety standards found in 49 C.F.R. Part 192. Mr. Gary Burnett inspected the proposed pipeline route on July 28, 2000 per Iowa Code § 479.11(1999). (Burnett report) He also reviewed the Marshall County REC petition and exhibits, and concluded that all petition deficiencies except those with regard to Exhibit C-2 had been corrected. (Burnett report) He stated in the report that these deficiencies were non-substantive, and that his inspection had not revealed anything that would make the proposed route unacceptable for the construction, operation, and maintenance of the proposed pipeline. (Burnett report) At the hearing, Mr. Burnett testified that revised Exhibit C-2 attached to Mr. Hanson's prefiled testimony satisfied all deficiencies. (testimony of Mr. Burnett)

The pipeline meets all design, construction, and testing requirements. (petition for permit; Burnett report; testimony of Mr. Burnett) Marshall County has obtained all required permits and necessary easements except one, and anticipates there will be no problem in obtaining the final easement. (petition for permit; testimony of Mr. Heithoff; testimony of Mr. Burnett) No objections or complaints have been filed by any landowners regarding the petition for permit. (petition for permit; testimony of Mr. Heithoff; testimony of Mr. Burnett)

Marshall County REC owns non-pipeline property within the state subject to execution of a reasonable value in excess of \$250,000. (petition for permit exhibit D)

Marshall County REC filed a land restoration plan with its permit, and amended the plan on July 31, 2000. (land restoration plan; Munyon memo) At the hearing, Mr. Hanson testified the plan had changed slightly. (testimony of Mr. Hanson) The pipeline will no longer be located on the approximately 45 feet of untilled vegetation land discussed in paragraph 7 of the land restoration plan. (testimony of Mr. Hanson) Only a small part of the proposed pipeline will be on agricultural land and thus subject to the land restoration statute and board rules. (petition for permit; land restoration plan; Munyon memo; testimony of Mr. Heithoff; testimony of Mr. Hanson) The only part of the pipeline on agricultural land will be approximately 700 feet in Section 11 in Jasper County on either side of Indian Creek. (testimony of Mr. Hanson; petition for permit; Burnett report) The land is currently planted in soybeans. (testimony of Mr. Hanson) This part of the route was chosen to avoid a bridge Jasper County will be replacing in the near future. (testimony of Mr. Hanson; Burnett report) The remainder of the proposed pipeline will be on non-agricultural land, under the traveled portion of a public road, or in public road right-of-way. (petition for permit; testimony of Mr. Hanson) The land restoration plan filed by Marshall County REC adequately addresses the land restoration issues specified in the land restoration statute and current board rules. (land restoration plan; Munyon memo; testimony of Mr. Heithoff; testimony of Mr. Hanson)

ANALYSIS

Sections 479.12 and 479.26 of the Iowa Code apply to all petitions for pipeline permits. Section 479.12 provides that:

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to safety requirements and as to location and route as determined by it to be just and proper. Before a permit is granted to a pipeline company, the board, after a public hearing as provided in this chapter, shall determine whether the services proposed to be rendered will promote the public convenience and necessity, and an affirmative finding to that effect is a condition precedent to the granting of a permit.

Iowa Code § 479.12 (1999). Section 479.26 requires any applicant for a pipeline permit to establish that it has property subject to execution within Iowa, other than pipelines, of a value greater than two hundred fifty thousand dollars, or it must file and maintain a surety bond of the same amount. The applicant may satisfy this requirement in any of several prescribed ways. Iowa Code § 479.26 (1999); 199 IAC §10.2(1)(d).

Together, these statutes generate four issues: (1) whether the services the petitioner proposes to render will promote the public convenience and necessity; (2) whether it is just and proper to impose terms, conditions and restrictions involving safety requirements upon the permit; (3) whether it is just and proper to impose terms, conditions and restrictions as to location and route of the pipeline upon the permit; and (4) whether the petitioner has presented adequate proof of satisfactory financial condition. These issues will be addressed in turn.

First, the evidence shows that this pipeline is necessary to provide natural gas service to the Harvester Development in Marshall County, Iowa, and will serve customers along the route in Jasper and Marshall counties. (petition for permit; Burnett report; testimony of Mr. Heithoff) There is currently no natural gas service available in the area to be served. (testimony of Mr. Heithoff) Therefore, the service promotes the public convenience and necessity. (petition for permit; Burnett report; testimony of Mr. Heithoff)

Second, the evidence shows the pipeline complies with the construction, safety and design requirements of Iowa Code Chapter 479 (1999), 199 IAC § 10.12, and 49 C.F.R. Part 192. (petition for permit; testimony of Mr. Burnett; Burnett report) There is no reason to impose additional safety-related terms, conditions, and restrictions upon the permit.

The third issue is whether terms, conditions, or restrictions as to location and route should be imposed. Iowa Code § 479.12 (1999). The evidence shows the location and route are reasonable and there is no reason the location or route of the pipeline should be changed, or that terms, conditions and restrictions regarding the location or route should be added to the permit. (petition for permit; Burnett report; testimony of Mr. Heithoff)

Finally, in accordance with Iowa Code § 479.26, Marshall County REC has satisfactorily demonstrated that it has property subject to execution within this state, other than pipelines, of a value in excess of \$250,000. (testimony of Mr. Heithoff; petition exhibit D)

Iowa Code Supplement § 479.29(9)(1999) provides that:

Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met.

The requirements of § 479.29 apply to pipeline construction projects commenced on or after June 1, 1999. Iowa Code Supplement § 479.29(12).

Iowa Code Supplement § 479.29(1)(1999) provides that the Board is to adopt rules establishing standards for the restoration of agricultural land during and after pipeline construction. The rules must address the following subjects:

- a. topsoil separation and replacement
- b. temporary and permanent repair to drain tile
- c. removal of rocks and debris from the right-of-way
- d. restoration of areas of soil compaction
- e. restoration of terraces, waterways, and other erosion control structures
- f. re-vegetation of untilled land
- g. future installation of drain tile or soil conservation structures
- h. restoration of land slope and contour
- i. restoration of areas used for field entrances and temporary roads
- j. construction in wet conditions and
- k. designation of a pipeline company point of contact for landowner inquiries or claims.

The Board has proposed land restoration rules pursuant to this statute, but has not yet adopted them, and they are therefore not in effect in this case. Docket No. RMU-99-10, In re: Restoration of Agricultural Lands During and After Pipeline Construction; Iowa Code §17A.4(1999). However, the Board's rules at 199 IAC Chapter 9, promulgated pursuant to previous sections of Iowa Code §479.29, are in effect. These rules address a number of the subjects listed above. Therefore,

Marshall County's land restoration plan must comply with the requirements of Iowa Code Supplement §479.29(1999) and 199 IAC Chapter 9.

The land restoration plan filed by Marshall County REC adequately addresses all land restoration issues contained in Iowa Code Supplement §479.29(1999) and 1999 IAC Chapter 9. (land restoration plan; testimony of Mr. Heithoff; Munyon memo; testimony of Mr. Hanson)

FINDINGS OF FACT

1. Marshall County REC is a pipeline company within the meaning of Iowa Code § 479.2 (1999). (testimony of Mr. Heithoff; Mr. Hanson)

2. On July 21, 2000, Marshall County REC filed a petition for a permit to construct, operate, and maintain approximately 230 feet of 2-inch diameter steel pipeline and approximately 10.17 miles of 6-inch polyethylene pipeline for the transportation of natural gas in Jasper and Marshall County, Iowa. (petition for permit; testimony of Mr. Heithoff) Marshall County REC amended its petition on July 26, 2000, July 31, 2000, and August 23, 2000. (petition for permit) Marshall County REC filed a land restoration plan with its petition, and amended the plan on July 31, 2000. (land restoration plan; Munyon memo) Marshall County REC further amended its plan in testimony at the hearing. (testimony of Mr. Hanson)

3. Marshall County REC has enlisted the aid of Midwest United Energy, LLC (MUE) to assist it with construction and operation of the pipeline facilities. (testimony of Mr. Heithoff) MUE will construct the pipeline facilities from Mingo to the

Harvester Development and negotiate with transporters/pipelines for Marshall County REC. (testimony of Mr. Heithoff) MUE will contract with Utility Consultants to train Marshall County REC employees in the operation and management of the facilities. (testimony of Mr. Heithoff; testimony of Mr. Hanson) MUE will operate and manage the facilities for the first 90 days of operation and Marshall County REC will then take over operation and management. (testimony of Mr. Heithoff) MUE will nominate and schedule transportation of natural gas to the Marshall County REC pipeline. (testimony of Mr. Heithoff)

4. Marshall County REC caused notice of the hearing to be published in Jasper County in The Newton Daily News, a newspaper of general circulation in the county, on August 18 and August 25, 2000. (affidavit of publication) Marshall County REC also caused notice of the hearing to be published in Marshall County in the Times-Republican, a newspaper of general circulation in the county, on August 23 and August 30, 2000. (affidavit of publication) Marshall County REC filed proof of payment of the costs of publication of these notices as required by Iowa Code § 479.13(1999) and 199 IAC § 10.4. (affidavit of publication)

5. This pipeline is necessary to provide natural gas service to the Harvester Development in Marshall County, Iowa, and will serve customers along the route in Jasper and Marshall counties. (petition for permit; Burnett report; testimony of Mr. Heithoff) There is currently no natural gas service available in the area to be served. (testimony of Mr. Heithoff) Therefore, the service promotes the

public convenience and necessity as required by Iowa Code § 479.12 (1999).

(petition for permit; Burnett report; testimony of Mr. Heithoff)

6. The pipeline complies with the construction, safety and design requirements of Iowa Code Chapter 479 (1999), 199 IAC § 10.12, and 49 C.F.R. Part 192. (petition for permit; testimony of Mr. Burnett; Burnett report) No further terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12(1999).

7. The location and route of the proposed pipeline is reasonable and no further terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12(1999). (petition for permit; Burnett report)

8. Marshall County REC has property subject to execution within this state, other than pipelines, of a value in excess of \$250,000, as required by Iowa Code § 479.26 (1999) and 199 IAC § 10.2(1)(d). (petition exhibit D)

9. No objections to the petition for a permit were filed. (testimony of Mr. Burnett)

10. Marshall County REC filed a land restoration plan that adequately addresses all land restoration issues contained in Iowa Code Supplement §479.29(1999) and 1999 IAC Chapter 9. (land restoration plan; testimony of Mr. Heithoff; Munyon memo)

CONCLUSIONS OF LAW

1. The Board has the authority to grant, amend and renew permits for the construction, operation and maintenance of pipelines for the intrastate transportation of natural gas. Iowa Code §§ 479.1, 479.4, 479.12 and 479.18 (1999); 199 IAC § 10.7.

2. The Board has jurisdiction over Marshall County REC, and over the petition for a natural gas pipeline permit it has filed. Iowa Code §§ 479.2, 479.5, 479.6, 479.12 and 479.18 (1999).

3. The petition of Marshall County REC for issuance of a permit for the natural gas pipeline in Docket No. P-841 should be granted. Iowa Code §§ 479.11, 479.12, 479.26, and 479.29 (1999); 199 IAC Chapters 9 and 10.

IT IS THEREFORE ORDERED:

1. Official notice is taken of the report dated August 8, 2000, filed in this docket by Mr. Gary Burnett, utility regulatory inspector for the Board. Official notice is also taken of the memo dated August 22, 2000 by Ms. Cynthia Munyon, utility analyst with the Board.

2. Pursuant to Iowa Code Chapter 479(1999), the petition for a pipeline permit filed by Marshall County REC in this docket is granted. A permit will be issued if this proposed decision and order becomes the final order of the Board. Marshall County REC has changed its name to Consumers Energy Cooperative. The permit will be issued using the name Consumers Energy Cooperative.

3. Marshall County REC must comply with the land restoration plan it filed with the petition (as amended) and the provisions of Iowa Code Supplement 479.29(1999) and 199 IAC Chapter 9.

4. Marshall County REC must provide timely notice to the Utilities Division before beginning construction of the pipeline, and must also file weekly progress reports during construction of the pipeline with the Utilities Division.

5. After Marshall County REC completes construction of the new pipeline, it must file a construction completion report with the Utilities Division. This report must include information regarding any unusual construction problems or occurrences, and a copy of the pressure test procedures used and the results obtained.

6. Within 180 days after completion of the construction of the new pipeline, IES must file a map that accurately shows the location of the pipeline route as constructed. The map will be a part of the record in this case, and will serve as the route description in the permit granted in this proceeding.

7. The Utilities Board retains jurisdiction of the subject matter in this docket.

8. Ordinarily, this proposed decision would become the final decision of the Board unless appealed to the Board within fifteen days of its issuance. Iowa Code § 17A.15(3) (1999); 199 IAC § 7.8(2). However, under appropriate circumstances, it is possible to reduce the time for appeal. 199 IAC 1.3, 7.8(2); Iowa Code §17A.15(3) (1999). Marshall County REC has requested expedited treatment

of this case so it can proceed with construction. No objections to this petition were filed. The Consumer Advocate does not object to a reduced appeal period. There are no unresolved issues that indicate a need for the 15-day appeal period.

Therefore, this proposed decision will become the final decision of the Board unless appealed to the Board within five (5) days of its issuance.

UTILITIES BOARD

/s/ Amy L. Christensen

Amy L. Christensen

Administrative Law Judge

ATTEST:

/s/ Raymond K. Vawter, Jr.

Executive Secretary

Dated at Des Moines, Iowa, this 13th day of September, 2000.